

establish a *prima facie* case of obviousness by demonstrating that all of the claim limitations are taught or suggested in the prior art.<sup>1</sup>

In the present case, applicant's invention is designed to be suspended from a stationary object and a vehicle only, which is not disclosed in the prior art. Quite to the contrary, the '577 reference uses poles **60** to support the load placed on the tarpaulin. To clarify this distinction, applicant has added language to its independent claim 1 to reflect this characteristic. As such, the claim teaches over the prior art and should be allowable.

Furthermore, it should be noted that if the intended function of the prior art is destroyed, a reference may not be properly combined to establish a *prima facie* case of obviousness.<sup>2</sup> In the instant case, the '577 reference's legs **60** are for support of the hammock, and maintain the desired "pocket" between support points, as well as alleviating strain on the objects to which it is attached. Were the '577 reference's legs removed to make the proposed combination, the prior art's support means would be destroyed, and the invention rendered useless. Likewise, the legs of '577 would impede the operation of applicant's invention by preventing flush contact with the ground, which is necessary for loading, and therefore they have no place there, either. As such, Murphy does not contain, and there is no other provision in the prior art, utilized to attach one end of a tarpaulin to a stationary object, and the other to a vehicle as *required* by applicant's claim. Providing legs for support and balance are wholly different and provide a distinct invention over that of the present applicant. As such, the examiner's rejection would further be unsustainable.

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<sup>1</sup> *In Re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974).

<sup>2</sup> *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

This argument would also apply to other references prevented, namely, the removal of the retractable cover of the '123 reference would destroy the function of the invention titled "Retractable Cover."

The examiner has also rejected claim 2-8 and 11 as being unpatentable over these same references, under §103(a), however, these claims are dependent upon amended claim 1, and as such, contain all of the limitations of such claim. Furthermore, applicant has advanced arguments establishing the allowability of claim 1. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.<sup>3</sup> Therefore, to the extent that claim 1 is allowable, claims 2-8 and 11 are also allowable, and as such, should be allowed.

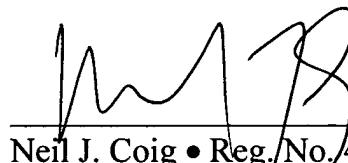
## Conclusion

Based on the above amendments and remarks, applicant believes that all of the claims in the case are allowable and an early Notice of Allowance is respectfully requested. If the Examiner believes a telephone conference will expedite the disposition of this matter, he/she is respectfully invited to contact this attorney at the number shown below.

### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service, in an envelope addressed to: The Honorable Commissioner of Patents and Trademarks, P.O. Box 1450, Alexandria, VA 22313-1450 on this 19th day of January, 2006.

  
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<sup>3</sup> *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed.Cir. 1988).